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SFW /A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Robert Wham et al. Examiner: Not Assigned  
Serial No.: 10/626, 390 Group: Art Unit 3739  
Filed: July 24, 2003 Docket: 2155 CIP 2A(203-3398CIP2A)  
For: **VESSEL SEALING SYSTEM** Dated: July 8, 2004

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION FOR AN UNINTENTIONALLY DELAYED DOMESTIC PRIORITY CLAIM**  
**UNDER 37 C.F.R. § 1.78(a)(3) and (a)(6)**

Sir:

1. The present application was filed on July 24, 2003 and originally claimed priority as a continuation-in-part application to Application Serial No. 10/073,761.

Application Serial No. 10/073,761, filed February 11, 2002, is a continuation-in-part of Application Serial No. 09/408, 944, filed September 30, 1999, which claims priority to Provisional Application No. 60/105,417 filed October 23, 1998. Therefore, Applicants respectfully request granting of this petition to correct the priority of the

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this Petition and the documents referred to as enclosed therein are being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 8, 2004.

Dated: July 8, 2004

Edward C. Meagher

present application to the filing date of the 60/105,417 application, namely, October 23, 1998. A Preliminary Amendment is attached amending the specification of the present application to reflect same. A copy of a Corrected Filing Receipt for Application Serial No. 10/073,761 is attached showing the proper chain of priority.

2. Fee (37 C.F.R. 1.17(t))

Application status is:

- |                                     |                               |            |
|-------------------------------------|-------------------------------|------------|
| <input type="checkbox"/>            | Small business entity – fee   | \$         |
| <input checked="" type="checkbox"/> | Other than small entity – fee | \$1,330.00 |

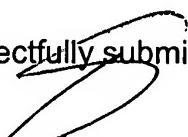
3. Payment of fee:

- Enclosed please find check for \$\_\_\_\_\_.
- Charge Account 21-0550 for any additional fee required.
- Charge Account 21-0550 the sum of \$1,330.00 and for any additional fee required.

4. The entire delay between the date the priority claim was due and the date of filing this petition was unintentional. 37 C.F.R. § 1.78(a)(3)(iii) and (a)(6)(iii).

A DUPLICATE OF THIS PETITION IS ATTACHED.

Respectfully submitted,

  
Edward C. Meagher  
Reg. No. 41,189

Date: July 8, 2004  
**Carter, DeLuca, Farrell & Schmidt, LLP**  
445 Broad Hollow Road  
Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

ECM/MJP/gm



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
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 Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
J10/073,761	02/11/2002	3739	2018	203-3233 CIP (2155 CIP)	17	27	2

Chief Patent Counsel  
 United Staes Surgical  
 Division of Tyco Healthcare Group LP  
 150 Glover Avenue  
 Norwalk, CT 06856

*[Signature]*

CONFIRMATION NO. 6113  
**CORRECTED FILING RECEIPT**  
 \*OC000000012789055\*  
 \*OC000000012789055\*

Date Mailed: 05/27/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

**Applicant(s)**

Robert Wham, Boulder, CO; ✓  
 Steven P. Buysse, Longmont, CO; ✓  
 James H. Orszulak, Nederland, CO; ✓

**Domestic Priority data as claimed by applicant**

This application is a CIP of 09/408,944 09/30/1999 PAT 6,398,779 ✓  
 which claims benefit of 60/105,417 10/23/1998 ✓

**Foreign Applications**

If Required, Foreign Filing License Granted: 03/15/2002

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No.

**Title**

VESSEL SEALING SYSTEM ✓

Preliminary Class

606

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**LICENSE FOR FOREIGN FILING UNDER  
Title 35, United States Code, Section 184  
Title 37, Code of Federal Regulations, 5.11 & 5.15**

**GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

**NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

**Request  
for  
Continued Examination (RCE)  
Transmittal**

Address to:  
Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

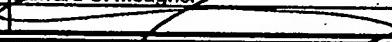
<i>Application Number</i>	10/073,761
<i>Filing Date</i>	February 11, 2002
<i>First Named Inventor</i>	Robert Wham et al.
<i>Art Unit</i>	3739
<i>Examiner Name</i>	M.F. Peffley
<i>Attorney Docket Number</i>	2155CIP (203-3398CIP)

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
- a.  Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i.  Consider the arguments in the Appeal Brief or Rely Brief previously filed on \_\_\_\_\_
- ii.  Other \_\_\_\_\_
- b.  Enclosed
- i.  Amendment/Reply
- ii.  Affidavit(s)/ Declaration(s)
- iii.  Information Disclosure Statement (IDS)
- iv.  Other Copy of Petition for an Unintentionally Delayed Domestic Priority Claim Under 37 CFR 1.78(a)(3) and (a)(6)
2. **Miscellaneous**
- Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a
- a.  period of \_\_\_\_\_ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(l) required)
- b.  Other \_\_\_\_\_
3. **Fees**
- The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
- The Director is hereby authorized to charge the following fees, or credit any overpayments, to
- a.  Deposit Account No. 21-0550
- i.  RCE fee required under 37 CFR 1.17(e)
- ii.  Extension of time fee (37 CFR 1.136 and 1.17)
- iii.  Other \_\_\_\_\_
- b.  Check in the amount of \$ \_\_\_\_\_ enclosed
- c.  Payment by credit card (Form PTO-2038 enclosed)

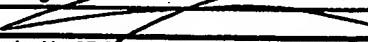
**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED**

Name (Print/Type)	Edward C. Meagher	Registration No. (Attorney/Agent)	41,189
Signature		Date	April 8, 2004

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)	Edward C. Meagher	Date	April 8, 2004
Signature			

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): **Robert Wham et al.** Examiner: **Peffley, M.F.**  
Serial No.: **10/073,761** Group: **Art Unit 3739**  
Filed: **February 11, 2002** Docket: **(2155CIP)203-3398CIP**  
For: **VESSEL SEALING  
SYSTEM** Dated: **April 8, 2004**

**AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
MAILSTOP: RCE

**COPY**

Dear Sir:

Please amend the above-identified application as follows:

**Amendments to the Specification begin on page 2 of this paper.**

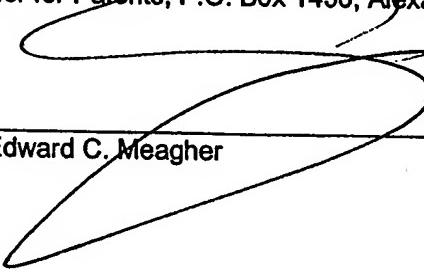
**Remarks begin on page 3 of this paper.**

---

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this Petition and the documents referred to as enclosed therein are being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 8, 2004.

Dated: April 8, 2004

  
Edward C. Meagher

**Amendments to the Specification:**

Please replace the paragraph beginning on page 1, line 6 of the present application with the following paragraph:

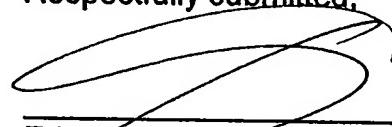
- The present application is a continuation-in-part application of Application Serial No. 09/408,944, filed September 30, 1999, the contents of which are herein incorporated by reference, which claims the benefit of U.S. Provisional Application No. 60/105,417, filed October 23, 1998. —

**REMARKS**

By this Amendment, Applicants have claimed priority to U.S. Application Serial No. 60/105,417 filed on October 23, 1998. Since this priority claim is being submitted after four months of the filing date of the present application and sixteen months after the filing of the priority application, a PETITION FOR AN UNINTENTIONALLY DELAYED DOMESTIC PRIORITY CLAIM UNDER 37 C.F.R. § 1.78(a)(3) and (a)(6) is being concurrently filed herewith, under separate cover.

Early and favorable consideration is earnestly solicited.

Respectfully submitted,



Edward C. Meagher  
Attorney for Applicants  
Reg. No. 41,189

**CARTER, DELUCA, FARRELL & SCHMIDT, LLP**  
*445 Broad Hollow Road – Suite 225*  
*Melville, New York 11747*  
(631) 501-5708  
(631) 501-3526

ECM/MJP/gm

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Robert Wham et al. Examiner: Peffley, M.F.  
Serial No.: 10/073,761 Group: Art Unit 3739  
Filed: February 11, 2002 Docket: (2155CIP)203-3398CIP)  
For: **VESSEL SEALING SYSTEM** Dated: April 8, 2004

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**COPY COPY**

**PETITION FOR AN UNINTENTIONALLY DELAYED DOMESTIC PRIORITY CLAIM**  
**UNDER 37 C.F.R. § 1.78(a)(3) and (a)(6)**

Sir:

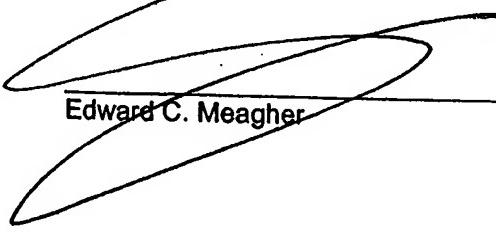
1. The present application was filed on February 11, 2002 and originally claimed priority as a continuation-in-part application to Application Serial No. 09/408,944. Application Serial No. 09/408, 944, filed September 30, 1999, claims priority to Provisional Application No. 60/105,417 filed October 23, 1998. Therefore, Applicants respectfully request granting of this petition to correct the priority of the

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**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this Petition and the documents referred to as enclosed therein are being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 8, 2004.

Dated: April 8, 2004

  
Edward C. Meagher

present application to the filing date of the 60/105,417 application, namely, October 23, 1998. A Request for Continued Examination (RCE) and Amendment are attached amending the specification of the present application to reflect same.

2. Fee (37 C.F.R. 1.17(t))

Application status is:

- |                                     |                               |             |
|-------------------------------------|-------------------------------|-------------|
| <input type="checkbox"/>            | Small business entity – fee   | \$          |
| <input checked="" type="checkbox"/> | Other than small entity – fee | \$ 1,330.00 |

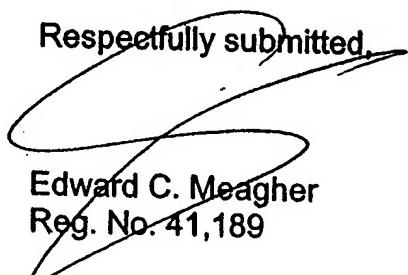
3. Payment of fee:

- Enclosed please find check for \$\_\_\_\_\_.
- Charge Account 21-0550 for any additional fee required.
- Charge Account 21-0550 the sum of \$1,330.00 and for any additional fee required.

4. The entire delay between the date the priority claim was due and the date of filing this petition was unintentional. 37 C.F.R. § 1.78(a)(3)(iii) and (a)(6)(iii).

A DUPLICATE OF THIS PETITION IS ATTACHED.

Respectfully submitted,

  
Edward C. Meagher  
Reg. No. 41,189

Date: April 8, 2004

**Carter, DeLuca, Farrell & Schmidt, LLP**  
445 Broad Hollow Road  
Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

ECM/MJP/gm

PATENT OFFICE DATE STAMP WILL ACKNOWLEDGE RECEIPT OF:

1. RCE Transmittal Sheet (in triplicate)
2. Amendment
3. Copy of Petition for an Unintentionally Delayed Domestic Priority Claim
4. Certificate of Mailing

Applicant: Wham et al.  
Serial No.: 10/073,761  
Filed: February 11, 2002  
For: VESSEL SEALING SYSTEM  
Docket: 2155CIP (203-3398CIP)  
Dated: April 8, 2004

ECM/MJP/gm





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Paper No. 22

Chief Patent Counsel  
United States Surgical  
Division of Tyco Healthcare Group LP  
150 Glover Avenue  
Norwalk CT 06856

XH

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MAY 27 2004

In re Application of  
Wham et al.  
Application No. 10/073,761  
Filed: February 11, 2002  
Attorney Docket No. (2155CIP)203-3398CIP

OFFICE OF PETITIONS

: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(6), filed April 12, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The prior formerly pending nonprovisional application No. 09/408,944 was filed on September 30, 1999, which is within twelve months of the filing date of the prior-filed provisional application, Application No. 60/105,417, which was filed on October 23, 1998, for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

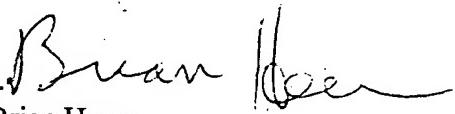
The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the prior nonprovisional application through which the benefit is sought. *See* 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/105,417 is granted.

*The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.*

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center AU 3739 for appropriate action on the Request For Continued Examination submitted April 12, 2004, and consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/105,417.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-1820.

  
Brian Hearn  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt



**PATENT**  
Atty. Docket No.: 2155CIP2A (203-3398CIP2A)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Wham et al.

Examiner: TBD

Serial No.: 10/626,390

Group: Art Unit 3739

Filed: July 24, 2003

Dated: July 8, 2004

For: VESSEL SEALING SYSTEM

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT TRANSMITTAL FORM**

Sir:

Transmitted herewith is an amendment in the above-identified application.

- [ ] Small entity status of this application under 37 C.F.R. § 1.9 and 1.27 has been established by a verified statement previously submitted.
- [ ] A verified statement to establish small entity under 37 C.F.R. § 1.9 and 1.27 is enclosed.
- [X] No additional fee is required.

The fee has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3)	SMALL ENTITY	OTHER THAN SMALL ENTITY		
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE FEE	ADDT. OR	RATE	ADDT. FEE
TOTAL	27*	MINUS 27**	=	X 9 \$	X 18	\$ 0	
INDEP.	2*	MINUS 3**	=	X 43 \$	X 86	\$ 0	
<input type="checkbox"/> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				X 140 \$	X 280	\$ 0	
				TOTAL	OR TOTAL	\$ 0	

ADDT. FEE      \$ -0-

\* If the entry in Co. 1 is less than entry in Col. 2, write "0" in Col. 3.

\*\* If the "Highest No. Previously Paid for" IN THIS SPACE is less than 20, enter "20".

\*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The Highest No. Previously Paid For (Total or indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on date below.

Dated: July 8, 2004

Edward C. Meagher

- Please charge Deposit Account No. 21-0550 in the amount of \$\_\_\_\_\_. Two (2) copies of this sheet are enclosed.
- A check in the amount of \$\_\_\_\_ is enclosed.
- Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,



Edward C. Meagher  
Reg. No. 41,189  
Attorney for Applicant(s)

***Carter, DeLuca, Farrell & Schmidt, LLP***

445 Broad Hollow Road  
Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

ECM/MJP/gm